

This opinion is not intended for publication

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:) Case No. 02-17294
)
SUE HESS,) Chapter 7
)
Debtor.) Judge Arthur I. Harris

ORDER OVERRULING TRUSTEE'S OBJECTION TO EXEMPTION

This matter comes before the Court on the Trustee's objection to the Debtor's claim of exemption in the Debtor's Individual Retirement Account (IRA). For the reasons that follow, the Trustee's objection is overruled.

On November 1, 2002, the Trustee and the Debtor filed stipulations, which provide in pertinent part as follows:

1. As of the petition date, the debtor was the owner of an IRA with an approximate value of \$3,223.33;
2. The IRA is a traditional IRA;
3. The Debtor claimed the exemption under Ohio Revised Code Section 2329.66(A)(10)(c);
4. The Debtor qualifies for the exemption if the exemption has not been preempted by federal law; and
5. The Trustee timely filed an objection.

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The legal issues addressed by the parties in this case are nearly identical to those recently adjudicated by Judge Morgenstern-Clarren in a Memorandum of Opinion in the case of *In re Mitchell*. See *In re Mitchell*, No. 02-13713 (Bankr. N.D. Ohio Oct. 31, 2002). The Court finds Judge Morgenstern-Clarren's opinion on the identical motion from that case both persuasive and compelling. Accordingly, the Court adopts and incorporates by reference the analysis contained in Judge Morgenstern-Clarren's October 31, 2002, Memorandum of Opinion in *In re Mitchell*, and the Trustee's objection is overruled.¹

IT IS SO ORDERED.

/s/ Arthur I. Harris 12/04/2002
Arthur I. Harris
United States Bankruptcy Judge

¹ Although Judge Morgenstern-Clarren found it unnecessary to address the effect of the savings clause contained in 29 U.S.C. § 1144(d) in *Mitchell*, this Court agrees with the Debtor's analysis of Section 1144(d) in the present case. As the Eleventh Circuit noted in *In re Schlein*, "It would be incongruous to hold pension benefits exempted under the federal bankruptcy law, but to strike down identical provisions enacted by the state under the express authorization of the bankruptcy code." 8 F.3d 745, 752 (11th Cir. 1993), quoting *In re Vickers*, 954 F.2d 1426, 1429 (8th Cir. 1992). The Court therefore holds, in the alternative, that Congress did not intend for ERISA to preempt a debtor's right to claim state law exemptions under Section 522(b)(2) of the Bankruptcy Code.